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MAR 29 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

March 29, 1993

Ms. Donna Searcy
Secretary
Federal Communications Commission
Washington, D.C. 20554Re: CC Docket No. 92-77 Billed Party Preference for 0+ InterLATA Calls

Dear Ms. Searcy:

Transmitted herewith for filing on behalf of PhoneTel Technologies, Inc. are an original and the requisite number of copies of its reply to oppositions to petition for reconsideration in the above-captioned matter. If there are any questions, please communicate directly with the undersigned.

Sincerely,



Mitchell F. Brecher

Enclosures

8604-000

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MAR 29 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Billed Party Preference
for 0+ InterLATA Calls

CC Docket No. 92-77
Phase I

REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION

PhoneTel Technologies, Inc. ("PhoneTel"), by its attorneys, hereby replies to the oppositions to PhoneTel's petition for reconsideration in the above-captioned proceeding and states as follows:

PhoneTel is a Cleveland, Ohio-headquartered interexchange carrier whose service offerings include the provision of operator-assisted calling services. As with other competitive providers of those services, PhoneTel has been harmed and its customers confused and inconvenienced by the proliferation of millions of American Telephone and Telegraph Company (AT&T) calling cards issued in the Card Issuer Identifier (CIID) format, and by the inaccurate and misleading information and usage instructions which accompanied the distribution of those cards. These facts have been well-documented in pleadings filed with the Commission, including prior filings of PhoneTel.¹ Indeed, they even resulted in issuance by the Commission of a letter of admonishment to AT&T.² Thus, there is no need for PhoneTel to rehash the details of those uncontroverted circumstances.

Because of the consumer confusion and competitive damage which AT&T's calling card mischief has brought to the interexchange marketplace, PhoneTel supported the 0+ Public

¹ See, e.g., comments of PhoneTel on Proprietary Calling Cards and 0+ Access, filed in Docket No. 92-77, June 2, 1992.

² Letter to Mr. Robert E. Allen, chairman and Chief Executive Officer, AT&T, from Donna R. Searcy, Secretary, By Direction of the Commission, FCC 92-490, released November 16, 1992.

Domain policy proposed by the Commission and urged its adoption. The Commission, however, failed to adopt that proposal, and instead directed AT&T to implement a "customer education" remedy.³ As set forth in PhoneTel's January 11, 1993 petition for reconsideration of the CIID Card Decision, that remedy will not resolve the competitive and public interest inequities caused by AT&T CIID card practices. Further, PhoneTel noted that the decision ignored critical facts and policy considerations which had been raised by commenting parties.

Predictably, AT&T has opposed the petitions for reconsideration filed by PhoneTel and by others. However, AT&T's opposition fails to respond to the facts or the legal and policy considerations raised by petitioners which counsel in favor of reconsideration. AT&T states that the petitions, including PhoneTel's, merely rehash arguments that have already been briefed and that were reviewed and rejected in the Commission's order.⁴ This statement is simply incorrect. Many of the most critical matters raised by commenting parties and by petitioners for reconsideration remain unrefuted by AT&T and unaddressed by the Commission.

One example of an important public interest issue never responded to by AT&T, nor even considered by the Commission, is the relevance of calling card acceptance and validation practices to the Commission's oft-stated concerns about network reliability. As PhoneTel noted, both in its initial comments and in its petition for reconsideration, according CIID cards the proprietary status desired by AT&T may advance that carrier's strategic and competitive objectives, but it will do little to ensure that consumers holding those cards will be able to place a phone call the next time that the carrier's network is disrupted. Although the Commission identified this concern in its CIID Card Decision,⁵ it preceded to ignore it.

³ Billed Party Preference for 0+ InterLATA Calls (Report and Order and Request for Supplemental Comment) 7 FCC Rcd 7714 (1992) (hereinafter, "CIID Card Decision").

⁴ AT&T's opposition to petitions for reconsideration, filed March 11, 1993 at 3.

⁵ CIID Card Decision, *supra* 7 FCC Rcd at 7721

It is difficult to fathom the Commission's refusal to consider the adverse impact of proprietary calling cards, (especially those issued with 0+ dialing instructions and directions to destroy line-based cards which are usable with other carriers' services) on reliable service to consumers, given the Commission's public interest concerns about reliability. As recently as March 25, 1993, the Commission issued a public notice of a Network Reliability Council Meeting scheduled for April 14. That notice contained the following agenda summary:

The agenda for the seventh meeting is as follows. Final Recommendations of the Signaling Systems Focus Team, the Switching Systems Focus Team, the E911 Systems Focus Team and a final update of the recommendations of the Fiber Systems Focus Team will be presented for Council consideration. The Steering Team will make recommendations on the continuity of work performed by the Focus Teams⁶

In order to ensure the availability of reliable service to the consuming public, the Commission must do more than work through a variety of focus teams and steering teams and their myriad reports. The 0+ Public Domain proposal presented the Commission with an opportunity to ensure that traveling callers would be able to utilize telecommunications services at all times, even when their card-issuing carrier's service became unavailable. By declining to adopt that policy, those consumers who carry AT&T CIID cards and who followed AT&T's instructions to destroy their line-based cards "for their own protection" will be unable to make a calling card call the next time that carrier suffers a network outage. Contrary to AT&T's allegation, that public interest concern has never been reviewed and rejected by the Commission. It has simply been ignored, perhaps lost in a sea of focus teams and steering teams.

Neither has the Commission explained why it has chosen to accord proprietary status to calling cards that are not truly proprietary. In its reconsideration petition, PhoneTel stated that, notwithstanding the CIID cards' purported proprietary status, those cards are, in fact, acceptable

⁶ Public Notice - "Network Reliability Council Meeting", released March 25, 1993.

by hundreds of other carriers, including all of the nation's local exchange carriers (many of whom compete with AT&T in the intraLATA toll market), as well as by certain international and domestic interexchange carriers chosen by AT&T. AT&T's response to this indisputable truth is that "the proprietary nature of [its] card validation system is not affected by the voluntary relationships [it] has established for use of that system."⁷ By recognizing the existence of these "voluntary relationships" with its former partners, AT&T is admitting that use of a CIID card neither ensures the cardholder AT&T service nor AT&T rates -- a stated basis in the CIID Card Decision for the Commission's willingness to bestow upon CIID cards the proprietary status sought by AT&T.⁸

Curiously, AT&T claims that its CIID cards are like other proprietary IXC cards in that they can be used on a 0+ basis only from telephones presubscribed to AT&T.⁹ This statement is belied by the facts. AT&T's CIID cards are not like other carriers' cards. Unlike the other carriers' calling cards referenced by AT&T, those card-issuing carriers have not directed twenty-five million card holders specifically to use 0+ access from telephones not presubscribed to the card-issuer, nor do any of those other card-issuing carriers permit hundreds of other carriers to validate their "proprietary" cards while denying access to other carriers.¹⁰ Since, unlike the cards of those other carriers, AT&T's cards are not proprietary,

⁷ AT&T opposition, supra at 11-12. At n. 27, AT&T attempts to justify its sharing of its CIID card data base with GTE Airfone by stating that "AT&T's network services are not available from such aircraft and consumers have no alternative options available when they are on such aircraft." In addition to being irrelevant to whether or not the cards are proprietary, both prongs of that statement are incorrect. First, AT&T's network services are available from

they are not entitled to proprietary treatment, and the Commission should reconsider its CID Card Decision to the extent that it affords those cards proprietary treatment.

For all of the reasons stated herein, as well as for those set forth in PhoneTel's petition for reconsideration, PhoneTel respectfully urges the Commission to reconsider its refusal to adopt the 0+ Public Domain policy initially-proposed in the notice of proposed rulemaking in this proceeding.

Respectfully submitted,

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March 29, 1993

more than 1,400 other companies. Thus, the situations are not analogous and the relief requested by PhoneTel in this proceeding would have no impact on Sprint's calling card practices or those of any other carrier which issues proprietary cards.

CERTIFICATE OF SERVICE

I, Raina N. Price-Webster, do hereby certify that a copy of the attached REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION of PhoneTel Technologies, Inc., which was filed with the Federal Communications Commission on March 29, 1993, has been served via first-class mail, postage pre-paid to the recipients on the attached pages.

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